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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re SALMA R., a Person Coming Under  
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

SALMA R.,

Defendant and Appellant.

G047175

(Super. Ct. No. DL042459)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Nick A. Dourbetas, Judge. Affirmed as modified.

Jesse W.J. Male, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, James D. Dutton and Sabrina Y. Lane-Erwin, Deputy Attorneys General, for Plaintiff and Respondent.

Salma R. appeals from an order after the juvenile court declared her a ward of the court pursuant to Welfare and Institutions Code section 602, and found true she possessed controlled substance paraphernalia. Salma argues the juvenile court imposed vague and overbroad probation terms and suggests modifications to those terms. The Attorney General does not object to the modifications. As we explain below, we modify the probation conditions and affirm the judgment as modified.

### FACTS

A school district security guard responded to an elementary school alarm. He smelled marijuana and saw six individuals, including a young woman who was later identified as Salma, with a cloud of smoke above their heads. After the guard walked Salma to his vehicle, Salma consented to a search of her purse where the guard recovered a methamphetamine pipe.

A petition charged Salma with misdemeanor possession of controlled substance paraphernalia (Health & Saf. Code, § 11364). After the juvenile court denied Salma's motion to suppress, Salma admitted the allegation and the court declared her a ward of the court and released her on probation with probation terms and conditions.

Those probation conditions included the following:

“Do not associate with anyone you know is disapproved of by the court, parent or guardian or probation officer, or anyone you know is on probation or parole. Or member of a criminal street gang or tagging crew. [¶] You are also not to associate with anyone who is using, selling, possessing, or under the influence of alcohol or controlled substances.” Salma did not object to the probation conditions.

### DISCUSSION

The juvenile court has wide discretion in establishing appropriate conditions of probation. (*In re Byron B.* (2004) 119 Cal.App.4th 1013, 1015.) Within this discretion, “[t]he court may impose and require any and all reasonable conditions that

it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.” (Welf. & Inst. Code, § 730, subd. (b).)

“‘[A] condition of probation that would be unconstitutional or otherwise improper for an adult probationer may be permissible for a minor under the supervision of the juvenile court[.]’ [Citations.]” (*In re Sheena K.* (2007) 40 Cal.4th 875, 889-890 (*Sheena K.*)). “This is because juveniles are deemed to be more in need of guidance and supervision than adults, and because a minor’s constitutional rights are more circumscribed.” (*In re Antonio R.* (2000) 78 Cal.App.4th 937, 941.) “‘A probation condition that imposes limitations on a person’s constitutional rights must closely tailor those limitations to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad. [Citation.]’ [Citation.]” (*In re Vincent G.* (2008) 162 Cal.App.4th 238, 245.) Knowledge requirements are necessary for nonassociation probation conditions to avoid unconstitutional vagueness. (*Sheena K.*, *supra*, 40 Cal.4th at pp. 890-891.) Facial constitutional challenges are preserved where they represent “‘pure questions of law that can be resolved without regard to the sentencing record in the trial court.’” (*Id.* at p. 884.)

Here, Salma contends the above-mentioned probation terms are vague or overbroad because they prohibit association with sellers and users of prescription medications and alcohol. Salma recommends the following modifications:

1. “Not associate with anyone known to the minor to be disapproved of by the Court, her parents or guardians, or the probation officer.”
2. “Not associate with anyone known to the minor to be a member of a gang as defined in Penal Code section 186.22, or known to the minor to be on probation or parole, [except with the approval of the probation officer].” (Fn. omitted.)

3. “Not associate with anyone known to the minor to be illegally possessing or using alcohol, or anyone known to the minor [to] be under the influence of alcohol.”

4. “Not associate with anyone known to the minor to be possessing, selling, or using any illegal or illegally obtained controlled substances.”

The Attorney General does not object to the modifications generally, or to Salma’s proposed modifications to Nos. 1 and 2 (Salma’s proposed modifications to No. 1 are stylistic only). The Attorney General additionally agrees with Salma’s proposed modification to No. 2, indicated in the above-bracketed language, in the interests of justice, i.e., to avoid additional judicial involvement in the event Salma has to participate in a group program where gang members or probationers are present. The Attorney General does, however, propose slightly different modifications to Nos. 3 and 4 as indicated in italics below.

3. “Not associate with anyone known to the minor to be illegally possessing, *selling*, or using alcohol, or anyone known to the minor to be under the influence of alcohol.”

4. “Not associate with anyone known to the minor to be possessing, selling, using, *or under the influence of* any illegal or illegally obtained controlled substances.”

Salma did not file a reply brief, but she did file a letter brief acknowledging the Attorney General’s “slightly different modifications.” Salma did not comment further on the Attorney General’s proposed modifications in her letter brief.

Both the alcohol and the controlled substance probation conditions are overbroad as imposed. The alcohol probation condition is overbroad because alcohol can be legally used by a vast segment of the population and Salma may have little choice but to associate with individuals who have used alcohol. The controlled substance probation condition is overbroad because it prohibits Salma from possessing or using prescription

medications, or associating with persons selling or using prescription medications. Thus, both probation conditions require the concept of illegality to be included in them. We suggest that in the future the superior court narrowly tailor these probation conditions to include the concept of illegality.

Thus, with respect to the probation conditions at issue, they are modified (*Sheena K., supra*, 40 Cal.4th at p. 892 [court authority to modify probation condition]) to read as follows:

1. “Not associate with anyone known to the minor to be disapproved of by the Court, her parents or guardian, or the probation officer.”

2. “Not associate with anyone known to the minor to be a member of a gang as defined in Penal Code section 186.22, or known to the minor to be on probation or parole, [except with the approval of the probation officer].”

3. “Not associate with anyone known to the minor to be illegally possessing, *selling*, or using alcohol, or anyone known to the minor to be under the influence of alcohol.”

4. “Not associate with anyone known to the minor to be possessing, selling, using, *or under the influence of* any illegal or illegally obtained controlled substances.”

#### DISPOSITION

We hereby modify Salma’s probation terms as follows:

1. “Not associate with anyone known to the minor to be disapproved of by the Court, her parents or guardian, or the probation officer.”

2. “Not associate with anyone known to the minor to be a member of a gang as defined in Penal Code section 186.22, or known to the minor to be on probation or parole, [except with the approval of the probation officer].”

3. “Not associate with anyone known to the minor to be illegally possessing, *selling*, or using alcohol, or anyone known to the minor to be under the influence of alcohol.”

4. “Not associate with anyone known to the minor to be possessing, selling, using, *or under the influence of* any illegal or illegally obtained controlled substances.”

The clerk of the juvenile court is directed to send the probation department a copy of the modified probation conditions. In all other respects, we affirm the judgment.

O’LEARY, P. J.

WE CONCUR:

ARONSON, J.

FYBEL, J.